

Senate File 379 - Enrolled

PAG LIN

SENATE FILE 379

1 1
1 2
1 3 AN ACT
1 4 RELATING TO THE IOWA PROBATE CODE, THE IOWA TRUST CODE, AND
1 5 CERTAIN OTHER TRUSTS.
1 6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
1 7
1 8 Section 1. Section 249A.3, subsection 11, paragraph d,
1 9 Code 2005, is amended to read as follows:
1 10 d. Failure of a surviving spouse to take ~~against a will~~ an
1 11 elective share pursuant to chapter 633, division V,
1 12 constitutes a transfer of assets for the purpose of
1 13 determining eligibility for medical assistance to the extent
1 14 that the value received by taking ~~against the will~~ an elective
1 15 share would have exceeded the value of the inheritance
1 16 received under the will.
1 17 Sec. 2. Section 633.3, subsection 15, Code 2005, is
1 18 amended by striking the subsection and inserting in lieu
1 19 thereof the following:
1 20 15. ESTATE == the real and personal property of either a
1 21 decedent or a ward, and may also refer to the real and
1 22 personal property of a trust as defined in section 633.10.
1 23 Sec. 3. Section 633.3, subsection 17, Code 2005, is
1 24 amended to read as follows:
1 25 17. FIDUCIARY == includes personal representative,
1 26 executor, administrator, guardian, conservator, and the
1 27 trustee of any trust as defined in section 633.10.
1 28 Sec. 4. Section 633.3, subsection 34, Code 2005, is
1 29 amended to read as follows:
1 30 34. TRUSTEE == the person or persons ~~appointed as trustee~~
1 31 ~~by the instrument creating the trust, or the person or persons~~
1 32 ~~appointed by the court to administer the trust serving as~~
1 33 trustee of a trust as defined in section 633.10.
1 34 Sec. 5. Section 633.3, subsection 35, Code 2005, is
1 35 amended by striking the subsection and inserting in lieu
2 1 thereof the following:
2 2 35. TRUSTS == includes only those trusts defined in
2 3 section 633.10.
2 4 Sec. 6. Section 633.10, unnumbered paragraph 1, Code 2005,
2 5 is amended to read as follows:
2 6 The In addition to the jurisdiction granted the district
2 7 court under the trust code or elsewhere, the district court
2 8 sitting in probate shall have jurisdiction of:
2 9 Sec. 7. Section 633.10, subsection 2, Code 2005, is
2 10 amended to read as follows:
2 11 2. CONSTRUCTION OF WILLS ~~AND TRUST INSTRUMENTS.~~
2 12 The construction of wills ~~and trust instruments~~ during the
2 13 administration of the estate ~~or trust~~, whether said
2 14 construction be incident to such administration, or as a
2 15 separate proceeding.
2 16 Sec. 8. Section 633.10, subsection 4, Code 2005, is
2 17 amended by striking the subsection and inserting in lieu
2 18 thereof the following:
2 19 4. TRUSTS AND TRUSTEES.
2 20 a. The ongoing administration and supervision, including
2 21 but not limited to the appointment of trustees, the granting
2 22 of letters of trusteeship, trust administration, and trust
2 23 settlement and closing, of the following trusts:
2 24 (1) A trust that was in existence on July 1, 2005, and
2 25 that is subject to continuous court supervision.
2 26 (2) A trust established by court decree that is subject to
2 27 continuous court supervision.
2 28 b. A trust described in paragraph "a" shall be governed by
2 29 this chapter and the provisions of chapter 633A which are not
2 30 inconsistent with the provisions of this chapter.
2 31 c. A trust not described in paragraph "a" shall be
2 32 governed exclusively by chapter 633A and shall be subject to
2 33 the jurisdiction of the district court sitting in probate only
2 34 as provided in section 633.6101.
2 35 d. Upon joint application by all trustees administering a
3 1 trust described in paragraph "a" and following notice to the
3 2 beneficiaries pursuant to section 633.40, the court shall
3 3 release the trust from further jurisdiction unless a
3 4 beneficiary objects. The court whose decree created the trust
3 5 may release the trust from continuous court supervision

3 6 following notice to the beneficiary pursuant to section
3 7 633.40. If such judicial release occurs for a trust
3 8 previously governed by this chapter, such trust shall be
3 9 governed by chapter 633A and the district court sitting in
3 10 probate only as provided in section 633.6101.

3 11 Sec. 9. Section 633.27, subsection 4, Code 2005, is
3 12 amended to read as follows:

3 13 4. The title of each trust ~~where letters of trusteeship~~
~~3 14 are issued described in section 633.10 that has not been~~
3 15 ~~released by the court from continuous court supervision.~~

3 16 Sec. 10. Section 633.108, Code 2005, is amended to read as
3 17 follows:

3 18 633.108 SMALL DISTRIBUTIONS TO MINORS == PAYMENT.

3 19 Whenever a minor becomes entitled under the terms of a will
3 20 to a bequest or legacy, ~~or~~ to a share of the estate of an
3 21 intestate, ~~or to a beneficial interest in a trust fund upon~~
~~3 22 the distribution of the trust fund,~~ and the value of the
3 23 bequest, legacy, ~~or~~ share, ~~or interest~~ does not exceed the sum
3 24 of ~~ten~~ ~~twenty-five~~ thousand dollars, the personal
3 25 representative ~~or trustee~~ may pay the bequest, legacy, ~~or~~
3 26 share, ~~or interest~~ to a custodian under any uniform transfers
3 27 to minors Act. Receipt by the custodian, when presented to
3 28 the court or filed with the report of distribution of the
3 29 fiduciary, shall have the same force and effect as though the
3 30 payment had been made to a duly appointed and qualified
3 31 conservator for the minor.

3 32 Sec. 11. Section 633.197, unnumbered paragraph 1, Code
3 33 2005, is amended to read as follows:

3 34 Personal representatives shall be allowed such reasonable
3 35 fees as may be determined by the court for services rendered,
4 1 but not in excess of the following commissions upon the gross
4 2 assets of the estate listed in the probate inventory ~~for Iowa~~
~~4 3 inheritance tax purposes~~, which shall be received as full
4 4 compensation for all ordinary services:

4 5 Sec. 12. Section 633.236, Code 2005, is amended by
4 6 striking the section and inserting in lieu thereof the
4 7 following:

4 8 633.236 RIGHT OF ELECTIVE SHARE OF SURVIVING SPOUSE.

4 9 When a married person domiciled in Iowa at the time of
4 10 death dies, the surviving spouse shall have the right to take
4 11 an elective share under the provisions of sections 633.237
4 12 through 633.246. If the surviving spouse has a conservator,
4 13 the court may authorize or direct the conservator to elect the
4 14 share as the court deems appropriate under the circumstances.

4 15 Sec. 13. Section 633.237, Code 2005, is amended by
4 16 striking the section and inserting in lieu thereof the
4 17 following:

4 18 633.237 PRESUMPTION AGAINST FILING ELECTIVE SHARE.

4 19 1. Following the appointment of a personal representative
4 20 of the estate of the decedent, who is not the spouse, the
4 21 personal representative shall cause to be served a written
4 22 notice upon the surviving spouse pursuant to section 633.40,
4 23 subsection 5, notifying the surviving spouse that unless,
4 24 within four months after service of the notice, the spouse
4 25 files an election in writing with the clerk of court electing
4 26 the share as set forth in section 633.236, and sections
4 27 633.238 through 633.246, the spouse shall be deemed to take
4 28 under the will or to receive the intestate share. If, within
4 29 the four-month period following service of the notice, an
4 30 affidavit is filed setting forth that the surviving spouse is
4 31 incapable of making the election and does not have a
4 32 conservator, the personal representative shall make
4 33 application to the court for an order pursuant to section
4 34 633.244.

4 35 2. Following the death of a settlor of a revocable trust,
5 1 the trustee of such revocable trust who is not the spouse
5 2 shall cause to be served a written notice upon the surviving
5 3 spouse pursuant to section 633.40, subsection 5, notifying the
5 4 surviving spouse that unless, within four months after service
5 5 of the notice, the spouse files an election with the trustee
5 6 electing the share as set forth in section 633.236, and
5 7 sections 633.238 through 633.246, the spouse shall be deemed
5 8 to take under the terms of the revocable trust. If, within
5 9 the four-month period following service of the notice, an
5 10 affidavit is filed setting forth that the surviving spouse is
5 11 incapable of making the election and does not have a
5 12 conservator, the trustee shall make application to the court
5 13 for an order pursuant to section 633.244.

5 14 3. If the surviving spouse has a conservator, notice shall
5 15 be given to the conservator and the spouse pursuant to
5 16 subsections 1 and 2.

5 17 4. The notice provisions under subsections 1 and 2 are not
5 18 applicable if the surviving spouse is a personal
5 19 representative of the estate or a trustee of a revocable
5 20 trust. If the surviving spouse fails to file an election
5 21 under this section within four months of the decedent's death,
5 22 it shall be conclusively presumed that the surviving spouse
5 23 elects to take under the will, receive the intestate share, or
5 24 take under the revocable trust.

5 25 5. Upon application of the surviving spouse or the
5 26 spouse's conservator filed before the time for making the
5 27 election expires, the court may extend the period in which the
5 28 surviving spouse may make the election.

5 29 Sec. 14. Section 633.238, Code 2005, is amended by
5 30 striking the section and inserting in lieu thereof the
5 31 following:

5 32 633.238 ELECTIVE SHARE OF SURVIVING SPOUSE.

5 33 1. The elective share of the surviving spouse shall be all
5 34 of the following:

5 35 a. One-third in value of all the legal or equitable
6 1 estates in real property possessed by the decedent at any time
6 2 during the marriage which have not been sold on execution or
6 3 other judicial sale, and to which the surviving spouse has
6 4 made no express written relinquishment of right.

6 5 b. All personal property that, at the time of death, was
6 6 in the hands of the decedent as the head of a family, exempt
6 7 from execution.

6 8 c. One-third of all personal property of the decedent that
6 9 is not necessary for the payment of debts and charges.

6 10 d. One-third in value of the property held in trust not
6 11 necessary for the payment of debts and charges over which the
6 12 decedent was a grantor and retained at the time of death the
6 13 power to alter, amend, or revoke the trust, or over which the
6 14 decedent waived or rescinded any such power within one year of
6 15 the date of death, and to which the surviving spouse has not
6 16 made any express written relinquishment.

6 17 2. The elective share described in this section shall be
6 18 in lieu of any property the spouse would otherwise receive
6 19 under the last will and testament of the decedent, through
6 20 intestacy, or under the terms of a revocable trust.

6 21 Sec. 15. Section 633.239, Code 2005, is amended by
6 22 striking the section and inserting in lieu thereof the
6 23 following:

6 24 633.239 SHARE TO EMBRACE HOMESTEAD.

6 25 The share of the surviving spouse in such real estate shall
6 26 be set off in such manner as to include the homestead, or so
6 27 much thereof as will be equal to the share allotted to the
6 28 spouse pursuant to section 633.238 unless the spouse prefers a
6 29 different arrangement, but no such different arrangement shall
6 30 be allowed unless there is sufficient property remaining to
6 31 pay the claims and charges against the decedent's estate.

6 32 Sec. 16. Section 633.240, Code 2005, is amended by
6 33 striking the section and inserting in lieu thereof the
6 34 following:

6 35 633.240 ELECTION TO RECEIVE HOMESTEAD.

7 1 In estates in which the surviving spouse has filed an
7 2 election and in all intestate estates, whether an election is
7 3 filed or not, the surviving spouse or the spouse's
7 4 conservator, if applicable, may, in lieu of the spouse's share
7 5 in the real property possessed by the decedent at any time
7 6 during the marriage, which has not been sold on execution or
7 7 other judicial sale, and to which the surviving spouse has
7 8 made no express written relinquishment of right, elect to
7 9 receive a life estate in the homestead. Such election shall
7 10 be made and entered of record as provided in section 633.245.
7 11 In making such election, the surviving spouse shall have all
7 12 the rights as to the personal property provided in section
7 13 633.238, subsection 1, paragraphs "b", "c", and "d". In case
7 14 of failure to make such election, the right to receive the
7 15 life estate in the homestead shall be waived.

7 16 Sec. 17. Section 633.241, Code 2005, is amended by
7 17 striking the section and inserting in lieu thereof the
7 18 following:

7 19 633.241 TIME FOR ELECTION TO RECEIVE LIFE ESTATE IN
7 20 HOMESTEAD.

7 21 If the surviving spouse does not make an election to
7 22 receive the life estate in the homestead and file it with the
7 23 clerk within four months from the date of second publication
7 24 of notice to creditors, it shall be conclusively presumed that
7 25 the surviving spouse waives the right to make the election.
7 26 The court on application may, prior to the expiration of the
7 27 period of four months, for cause shown, enter an order

7 28 extending the time for making the election.
7 29 Sec. 18. Section 633.242, Code 2005, is amended by
7 30 striking the section and inserting in lieu thereof the
7 31 following:
7 32 633.242 RIGHTS OF ELECTION PERSONAL TO SURVIVING SPOUSE.
7 33 The right of the surviving spouse to take an elective
7 34 share, and the right of the surviving spouse to receive a life
7 35 estate in the homestead, are personal. They are not
8 1 transferable and cannot be exercised for the spouse subsequent
8 2 to the spouse's death. If the surviving spouse dies prior to
8 3 filing an election, it shall be conclusively presumed that the
8 4 surviving spouse does not take such elective share.
8 5 Sec. 19. Section 633.243, Code 2005, is amended by
8 6 striking the section and inserting in lieu thereof the
8 7 following:
8 8 633.243 FILING ELECTIONS.
8 9 The filing of the elective share and the election to
8 10 receive a life estate in the homestead shall be filed in the
8 11 office of the clerk in which the decedent's estate is being
8 12 administered and served on the trustee of the revocable trust.
8 13 The court where the election is filed shall have exclusive
8 14 jurisdiction over all matters regarding elections under this
8 15 chapter.
8 16 Sec. 20. Section 633.244, Code 2005, is amended by
8 17 striking the section and inserting in lieu thereof the
8 18 following:
8 19 633.244 INCOMPETENT SPOUSE == ELECTION BY COURT.
8 20 In case an affidavit is filed that the surviving spouse is
8 21 incapable of determining whether to take the elective share,
8 22 or to elect to receive a life estate in the homestead, and
8 23 does not have a conservator, the court shall fix a time and
8 24 place of hearing on the matter and cause a notice thereof to
8 25 be served upon the surviving spouse in such manner and for
8 26 such time as the court may direct. At the hearing, a guardian
8 27 ad litem shall be appointed to represent the spouse and the
8 28 court shall enter such orders as it deems appropriate under
8 29 the circumstances. The guardian ad litem shall be a
8 30 practicing attorney.
8 31 Sec. 21. Section 633.246A, Code 2005, is amended by
8 32 striking the section and inserting in lieu thereof the
8 33 following:
8 34 633.246A MEDICAL ASSISTANCE ELIGIBILITY.
8 35 Failure of a surviving spouse to make an election under
9 1 this division constitutes a transfer of assets for the purpose
9 2 of determining eligibility for medical assistance pursuant to
9 3 chapter 249A to the extent that the value received by making
9 4 the election would have exceeded the value of property
9 5 received absent the election.
9 6 Sec. 22. Section 633.247, Code 2005, is amended by
9 7 striking the section and inserting in lieu thereof the
9 8 following:
9 9 633.247 SETTING OFF ELECTIVE SHARE OF SURVIVING SPOUSE.
9 10 The share of the surviving spouse under section 633.236 may
9 11 be set off by the mutual consent of all parties in interest,
9 12 or by referees appointed by the court. An application to have
9 13 the share set off by referees shall be made by an interested
9 14 party in writing by filing with the clerk of court. A copy of
9 15 such application shall be sent to all interested parties.
9 16 Sec. 23. Section 633.248, Code 2005, is amended to read as
9 17 follows:
9 18 633.248 REFEREE == NOTICE.
9 19 In the absence of mutual consent of all interested parties
9 20 to the appointment of referees, the court shall fix a time and
9 21 place for hearing upon such application and of the fact that
9 22 referees will be appointed if such application is granted, and
9 23 shall prescribe the time and manner of the service of notice
9 24 of the hearing.
9 25 Sec. 24. Section 633.252, Code 2005, is amended by
9 26 striking the section and inserting in lieu thereof the
9 27 following:
9 28 633.252 CONFIRMATION CONCLUSIVE == POSSESSION.
9 29 An order confirming a report of the referee shall be
9 30 binding and conclusive unless appealed within thirty days and
9 31 the surviving spouse may bring an action to obtain possession
9 32 of any assets set apart to the surviving spouse. Such
9 33 elective share constitutes a judgment lien in favor of such
9 34 surviving spouse against the possessor of such assets.
9 35 Sec. 25. Section 633.264, Code 2005, is amended to read as
10 1 follows:
10 2 633.264 DISPOSAL OF PROPERTY BY WILL.
10 3 Subject to the rights of the surviving spouse to ~~elect to~~

10 4 take ~~against the will~~ an elective share as provided by section
10 5 633.236, any person of full age and sound mind may dispose by
10 6 will of all the person's property, except sufficient to pay
10 7 the debts and charges against the person's estate.

10 8 Sec. 26. Section 633.271, Code 2005, is amended to read as
10 9 follows:

10 10 633.271 EFFECT OF DIVORCE OR DISSOLUTION.

10 11 1. If after making a will the testator is divorced or the
10 12 testator's marriage is dissolved, all provisions in the will
10 13 in favor of the testator's spouse or of a relative of the
10 14 testator's spouse, including but not limited to dispositions,
10 15 appointments relating to of property, and nominations to serve
10 16 in any fiduciary or representative capacity, are thereby
10 17 revoked by the divorce or dissolution of marriage, unless the
10 18 will provides otherwise.

10 19 2. ~~In~~ Unless the will provides otherwise, in the event the
10 20 testator and spouse remarry each other, the provisions of the
10 21 will revoked by the divorce or dissolution of marriage shall
10 22 be reinstated unless otherwise revoked by the testator, except
10 23 for provisions in favor of a person who died prior to the
10 24 remarriage which shall not be reinstated.

10 25 3. For the purposes of this section, "relative of the
10 26 testator's spouse" means a person who is related to the
10 27 divorced testator's former spouse by blood, adoption, or
10 28 affinity, and who, subsequent to a divorce or dissolution of
10 29 marriage, ceased to be related to the testator by blood,
10 30 adoption, or affinity.

10 31 Sec. 27. Section 633.434, unnumbered paragraph 2, Code
10 32 2005, is amended to read as follows:

10 33 Upon the expiration of the later to occur of four months
10 34 after the date of the second publication of notice to
10 35 creditors or one month after the service of the notice by
11 1 ordinary mail upon all claimants whose identities are
11 2 reasonably ascertainable, at their last known addresses and
11 3 whose claims will not or may not be paid or otherwise
11 4 satisfied during administration, the personal representative
11 5 shall pay the debts and charges against the estate in
11 6 accordance with this probate code. If it appears at any time
11 7 that the estate is or may be insolvent, that there are
11 8 insufficient funds on hand, or that there is other good and
11 9 sufficient cause, the personal representative may report that
11 10 fact to the court and apply for any order that the personal
11 11 representative deems necessary.

11 12 Sec. 28. Section 633.477, subsection 10, Code 2005, is
11 13 amended to read as follows:

11 14 10. A statement as to whether or not all statutory
11 15 requirements pertaining to taxes have been complied with ~~and a~~
11 16 ~~statement as to~~ including whether the federal estate tax due
11 17 has been paid, ~~and~~ whether a lien continues to exist for any
11 18 federal estate tax, ~~and whether inheritance tax was paid or a~~
11 19 ~~return was filed in this state.~~

11 20 Sec. 29. Section 633.574, Code 2005, is amended to read as
11 21 follows:

11 22 633.574 PROCEDURE IN LIEU OF CONSERVATORSHIP.

11 23 If a conservator has not been appointed, money due a minor
11 24 or other property to which a minor is entitled, not exceeding
11 25 in the aggregate ~~ten~~ twenty-five thousand dollars in value,
11 26 shall be paid or delivered to a custodian under any uniform
11 27 transfers to minors Act. The written receipt of the custodian
11 28 constitutes an acquittance of the person making the payment of
11 29 money or delivery of property.

11 30 Sec. 30. Section 633.681, Code 2005, is amended to read as
11 31 follows:

11 32 633.681 ASSETS OF MINOR WARD EXHAUSTED.

11 33 When the assets of a minor ward's conservatorship are
11 34 exhausted or consist of personal property only of an aggregate
11 35 value not in excess of ~~ten~~ twenty-five thousand dollars, the
12 1 court, upon application or upon its own motion, may terminate
12 2 the conservatorship. The order for termination shall direct
12 3 the conservator to deliver any property remaining after the
12 4 payment of allowed claims and expenses of administration to a
12 5 custodian under any uniform transfers to minors Act. Such
12 6 delivery shall have the same force and effect as if delivery
12 7 had been made to the ward after attaining majority.

12 8 Sec. 31. Section 633.699, Code 2005, is amended by
12 9 striking the section and inserting in lieu thereof the
12 10 following:

12 11 633.699 POWERS OF TRUSTEES.

12 12 Unless it is otherwise provided by the will creating a
12 13 testamentary trust, the instrument creating an express trust,
12 14 or by an order or decree duly entered by a court of competent

12 15 jurisdiction, a trustee shall have all the powers granted a
12 16 trustee under sections 633.4401 and 633.4402. Documents
12 17 incorporating by reference powers granted a trustee under the
12 18 probate code or under this section shall be interpreted
12 19 accordingly, even if the execution or adoption of the
12 20 instrument creating the trust occurred prior to July 1, 2005.

12 21 Sec. 32. NEW SECTION. 633.699B APPLICABILITY OF LAW.

12 22 The terms of this division, and all other terms of this
12 23 probate code relating to trusts and trustees, shall apply only
12 24 to trusts that remain under continuous court supervision
12 25 pursuant to section 633.10 and to trusts that have not been
12 26 released from such continuous supervision pursuant to section
12 27 633.10. Regarding all such trusts, the terms of this chapter
12 28 shall supersede any inconsistent terms in the trust code and
12 29 such trusts shall be governed by terms of the trust code that
12 30 are not inconsistent with this probate code.

12 31 Sec. 33. Section 633.705, Code 2005, is amended by adding
12 32 the following new subsections:

12 33 NEW SUBSECTION. 3. Receipt of the affidavit described in
12 34 subsection 2 by the holder of the principal's property
12 35 constitutes sufficient acquittance for the payment of money,
13 1 delivery of property, or transfer of a registered ownership of
13 2 property as directed by the attorney in fact or agent and
13 3 discharges the holder from further liability with respect to
13 4 the money or property, if the holder has taken reasonable
13 5 steps to verify the identity of the person acting as attorney
13 6 in fact or agent. The holder of the principal's property may
13 7 rely in good faith on the statements contained in the
13 8 affidavit and has no duty to inquire into the truth of any
13 9 statements in the affidavit.

13 10 NEW SUBSECTION. 4. If an attorney in fact or agent has
13 11 provided the affidavit described in subsection 2 and the
13 12 holder of the principal's property refuses to pay, deliver, or
13 13 transfer any property or evidence thereof within a reasonable
13 14 amount of time, the principal, acting through the attorney in
13 15 fact or agent, may recover the property or compel its payment,
13 16 delivery, or transfer in an action brought for that purpose
13 17 against the holder of the property.

13 18 a. If an action is brought against the holder under this
13 19 subsection and the court finds that the holder of the
13 20 principal's property acted unreasonably in refusing to pay,
13 21 deliver, or transfer the property as directed by the attorney
13 22 in fact, the court may award any or all of the following to
13 23 the principal:

13 24 (1) Damages sustained by the principal.
13 25 (2) Costs of the action.
13 26 (3) A penalty in an amount determined by the court, not
13 27 less than five hundred dollars or more than one thousand
13 28 dollars.
13 29 (4) Reasonable attorney fees, as determined by the court,
13 30 based on the value of the time reasonably expended by the
13 31 attorney and not by the amount of the recovery on behalf of
13 32 the principal.

13 33 b. No action shall be brought pursuant to this section
13 34 more than one year after the date of the occurrence of the
13 35 violation.

14 1 Sec. 34. Section 633.706, Code 2005, is amended by adding
14 2 the following new subsections:

14 3 NEW SUBSECTION. 4. Receipt, by the holder of the
14 4 principal's property, of the affidavit described in subsection
14 5 2 constitutes sufficient acquittance for the payment of money,
14 6 delivery of property, or transfer of the registered ownership
14 7 of property as directed by the attorney in fact or agent and
14 8 discharges the holder from any further liability to any person
14 9 with respect to the money or the property, if the holder has
14 10 taken reasonable steps to verify the identity of the person
14 11 acting as attorney in fact or agent. The holder of the
14 12 principal's property may rely in good faith on the statements
14 13 in the affidavit and has no duty to inquire into the truth of
14 14 any of the statements in the affidavit.

14 15 NEW SUBSECTION. 5. If an attorney in fact or agent has
14 16 provided the affidavit described in subsection 2 and the
14 17 holder of the principal's property refuses to pay, deliver, or
14 18 transfer any property or evidence thereof within a reasonable
14 19 amount of time, the principal, acting through the attorney in
14 20 fact may recover the property or compel its payment, delivery,
14 21 or transfer in an action brought for that purpose against the
14 22 holder of the property.

14 23 a. If an action is brought against the holder under this
14 24 subsection and the court finds that the holder of the
14 25 principal's property acted unreasonably in refusing to pay,

14 26 deliver, or transfer the property as directed by the attorney
14 27 in fact, the court may award any or all of the following to
14 28 the principal:
14 29 (1) Damages sustained by the principal.
14 30 (2) Costs of the action.
14 31 (3) A penalty in an amount determined by the court, not
14 32 less than five hundred dollars or more than one thousand
14 33 dollars.

14 34 (4) Reasonable attorney fees, as determined by the court,
14 35 based on the value of the time reasonably expended by the
15 1 attorney and not by the amount of the recovery on behalf of
15 2 the principal.

15 3 b. No action shall be brought pursuant to this section
15 4 more than one year after the date of the occurrence of the
15 5 violation.

15 6 Sec. 35. Section 633.1102, Code 2005, is amended by adding
15 7 the following new subsection:

15 8 NEW SUBSECTION. 0A. "Adjusted gross estate", as it
15 9 relates to a trust, means the same as defined in section
15 10 633.266.

15 11 Sec. 36. Section 633.1107, Code 2005, is amended to read
15 12 as follows:

15 13 633.1107 SCOPE OF TRUST CODE.

15 14 1. This Except as otherwise provided in subsection 2, this
15 15 trust code is intended to shall apply to trusts, as defined in
15 16 section 633.1102, subsection 17, that are intentionally
15 17 created, or deemed to be intentionally created, by individuals
15 18 and other entities.

15 19 2. With regard to trusts described in section 633.10, that
15 20 have not been judicially released from continuous court

15 21 supervision, this trust code shall apply only to the extent
15 22 not inconsistent with the relevant provisions of chapter 633.

15 23 With regard to all other trusts defined in section 633.1102,
15 24 the terms of chapter 633 shall be inapplicable, and the terms

15 25 of this trust code shall prevail over any inconsistent
15 26 provisions of Iowa law.

15 27 Sec. 37. Section 633.2208, Code 2005, is amended by adding
15 28 the following new subsection:

15 29 NEW SUBSECTION. 3. By way of illustration and without
15 30 limitation, a trust may be divided pursuant to this section to
15 31 allow a trust to qualify as a marital deduction trust for tax
15 32 purposes, as a qualified subchapter S trust for federal income
15 33 tax purposes, as a separate trust for federal generation
15 34 skipping tax purposes, or for any other federal or state
15 35 income, estate, excise, or inheritance tax benefit, or to
16 1 facilitate the administration of a trust.

16 2 Sec. 38. Section 633.2301, subsection 4, unnumbered
16 3 paragraph 1, Code 2005, is amended to read as follows:

16 4 A creditor or assignee of a beneficiary of a spendthrift
16 5 trust ~~shall~~ may not compel a distribution that is subject to
16 6 the trustee's discretion if ~~any of the following apply despite~~
16 7 ~~the fact that:~~

16 8 Sec. 39. Section 633.2303, Code 2005, is amended by adding
16 9 the following new subsection:

16 10 NEW SUBSECTION. 3. The assets of an irrevocable trust
16 11 shall not become subject to the claims of creditors of the
16 12 settlor of a trust solely due to a provision in the trust that
16 13 allows a trustee of the trust to reimburse the settlor for
16 14 income taxes payable on the income of the trust. This
16 15 subsection shall not limit the rights of a creditor of the
16 16 settlor to assert a claim against the assets of the trust due
16 17 to the retention or grant of any rights to the settlor under
16 18 the trust instrument or any other beneficial interest of the
16 19 settlor other than as specifically set forth in this
16 20 subsection.

16 21 Sec. 40. Section 633.3107, Code 2005, is amended to read
16 22 as follows:

16 23 633.3107 EFFECT OF DIVORCE OR DISSOLUTION.

16 24 1. If, after executing a revocable trust, the settlor is
16 25 divorced or the settlor's marriage is dissolved, all
16 26 provisions in the trust in favor of the settlor's spouse or of
16 27 a relative of the settlor's spouse, including, but not limited
16 28 to, dispositions, appointments of property, and nominations to
16 29 serve in any fiduciary or representative capacity are revoked
16 30 by divorce or dissolution of marriage unless the trust
16 31 instrument provides otherwise.

16 32 2. ~~In~~ Unless the trust instrument provides otherwise, in
16 33 the event the settlor and spouse remarry each other, the
16 34 provisions of the revocable trust revoked by the divorce or
16 35 dissolution of marriage shall be reinstated unless otherwise
17 1 modified by the settlor, except for provisions in favor of a

17 2 person who died prior to the remarriage which shall not be
17 3 reinstated.

17 4 For the purposes of this section, "relative of the
17 5 settlor's spouse" means a person who is related to the
17 6 divorced settlor's former spouse by blood, adoption, or
17 7 affinity, and who, subsequent to the divorce or dissolution of
17 8 marriage, ceased to be related to the settlor by blood,
17 9 adoption, or affinity.

17 10 Sec. 41. NEW SECTION. 633.3112 CLASSIFICATION OF DEBTS
17 11 AND CHARGES.

17 12 If a revocable trust becomes subject to the claims of a
17 13 settlor's creditors and the costs of administration of the
17 14 settlor's estate pursuant to section 633.3104, following the
17 15 payment of the proper costs of administration of the trust and
17 16 any claims against the trust, the debts and charges of the
17 17 settlor's estate payable by the trust shall be classified
17 18 pursuant to sections 633.425 and 633.426 as such sections
17 19 exist on the date of the settlor's death.

17 20 Sec. 42. Section 633.4701, Code 2005, is amended by adding
17 21 the following new subsection:

17 22 NEW SUBSECTION. 8A. For the purposes of this section, a
17 23 term of the trust requiring that a beneficiary survive a
17 24 person whose death does not make the beneficiary entitled to
17 25 possession or enjoyment of the beneficiary's interest in the
17 26 trust shall not be considered as "otherwise specifically
17 27 stated by the terms of the trust" nor as an "express condition
17 28 of survivorship imposed by the terms of the trust".

17 29 Sec. 43. Section 633.4701, subsection 9, Code 2005, is
17 30 amended to read as follows:

17 31 9. If an interest to which this section applies is given
17 32 to a class, other than a class described as "issue",
17 33 "descendants", "heirs of the body", "heirs", "next of kin",
17 34 "relatives", or "family", or a class described by language of
17 35 similar import, the members of the class who are living on the
18 1 date on which the class becomes entitled to possession or
18 2 enjoyment of the interest shall be considered as alternate
18 3 beneficiaries under this section. However, neither the
18 4 residuary beneficiaries under the settlor's will nor the
18 5 settlor's heirs shall be considered as alternate beneficiaries
18 6 for the purposes of this section.

18 7 Sec. 44. NEW SECTION. 633.4703 GENERAL ORDER FOR
18 8 ABATEMENT.

18 9 Except as otherwise provided by the governing instrument,
18 10 where necessary to abate shares of the beneficiaries of a
18 11 trust for the payment of debts and charges, federal and state
18 12 estate taxes, bequests, and the shares of children born or
18 13 adopted after the execution of the trust, abatement shall
18 14 occur in the following order:

- 18 15 1. Shares allocated to the residuary beneficiaries of the
18 16 trust shall be abated first, on a pro rata basis.
- 18 17 2. Shares defined by a dollar amount, on a pro rata basis.
- 18 18 3. Shares described as specific items of property whether
18 19 tangible or intangible shall be abated last, and such
18 20 abatement shall be done as equitably by the trustee among the
18 21 various beneficiaries as circumstances reasonably allow.
- 18 22 4. Notwithstanding subsections 1, 2, or 3, a disposition
18 23 in favor of the grantor's surviving spouse shall not be abated
18 24 where such abatement would have the effect of increasing the
18 25 amount of federal estate or federal gift taxes payable by a
18 26 person or an entity.

18 27 Sec. 45. NEW SECTION. 633.4704 SIMULTANEOUS DEATH.

18 28 If the determination of the successor of a beneficial
18 29 interest in a trust is dependent upon whether a beneficiary
18 30 has survived the death of a settlor, of another beneficiary,
18 31 or of any other person, the uniform simultaneous death Act,
18 32 sections 633.523 through 633.528, shall govern the
18 33 determination of who shall be considered to have died first.

18 34 Sec. 46. NEW SECTION. 633.4705 PRINCIPAL AND INCOME.
18 35 Chapter 637 shall apply to trusts subject to this chapter.

19 1 Sec. 47. NEW SECTION. 633.4706 SMALL DISTRIBUTIONS TO
19 2 MINORS == PAYMENT.

19 3 When a minor becomes entitled under the terms of the trust
19 4 to a beneficial interest in the trust upon the distribution of
19 5 the trust fund and the value of the interest does not exceed
19 6 the sum of twenty-five thousand dollars, the trustee may pay
19 7 the interest to a custodian under any uniform transfers to
19 8 minors Act. Receipt by the custodian shall have the same
19 9 force and effect as though payment had been made to a duly
19 10 appointed and qualified conservator for the minor.

19 11 Sec. 48. NEW SECTION. 633.5105 CHARITABLE TRUSTS.

19 12 In addition to the provisions of this chapter, a charitable

19 13 trust that is a private foundation shall be governed by the
19 14 provisions of chapter 634.
19 15 Sec. 49. Section 633.6101, Code 2005, is amended to read
19 16 as follows:
19 17 633.6101 SUBJECT MATTER JURISDICTION.
19 18 The district court sitting in probate has exclusive
19 19 jurisdiction of proceedings concerning the internal affairs of
19 20 a trust and of actions and proceedings to determine the
19 21 existence of a trust, actions and proceedings by or against
19 22 creditors or debtors of a trust, and other actions and
19 23 proceedings involving a trust and third persons. Such
19 24 jurisdiction may be invoked by any interested party at any
19 25 time.

19 26 Sec. 50. Sections 633.28, 633.699A, 633.703A, 633.703B,
19 27 633.7101, 636.60, 636.60A, 636.61, Code 2005, are repealed.

19 28 Sec. 51. Sections 633.2; 633.3, unnumbered paragraph 1;
19 29 633.3, subsections 7 and 20; 633.22, subsection 4; 633.34;
19 30 633.38; 633.40, subsection 1; 633.44; 633.46; 633.47; 633.71;
19 31 633.88; 633.118; 633.160; 633.162; 633.350; 633.365; 633.389;
19 32 633.433; 633.500; 633.502; 633.597; 633.633; 633.633A; and
19 33 633.652, Code 2005, are amended by striking from the
19 34 applicable section, paragraph, or subsection the word "Code".
19 35 and inserting in lieu thereof the following: "probate code".

20 1 Sec. 52. CODE EDITOR DIRECTIVE. Sections 633.707,
20 2 unnumbered paragraph 1; 633.711, subsection 2; 633.800;
20 3 633.801, unnumbered paragraph 1; 633.803; 633.807, subsections
20 4 2 and 7; 633.808; 633.809; 633.810; 633.901; 633.902,
20 5 unnumbered paragraph 1; 633.903; 633.904; 633.905, subsection
20 6 6; 633.913, subsections 5 and 6; 633.914; 633.915; 633.916;
20 7 633.917; 633.1101; 633.1102, unnumbered paragraph 1; and
20 8 633.1104; Code 2005, are amended by striking from the
20 9 applicable section, paragraph, or subsection the word
20 10 "division" and inserting in lieu thereof the following:
20 11 "chapter".

20 12 Sec. 53. CODE EDITOR DIRECTIVE. The Code editor is
20 13 directed to transfer from chapter 633, division XVII (sections
20 14 633.705 and 633.706), division XVIII (633.707 through
20 15 633.711), division XIX (633.800 through 633.811), and division
20 16 XX (633.901 through 633.917), as amended in this Act, to new
20 17 chapters 633B, 633C, 633D, and 633E, respectively.

20 18 Sec. 54. CODE EDITOR DIRECTIVE. The Code editor is
20 19 directed to transfer from chapter 633, sections 633.1101
20 20 through 633.1108, 633.2101 through 633.2107, 633.2201 through
20 21 633.2208, 633.2301 through 633.2303, 633.3101 through
20 22 633.3111, 633.4101 through 633.4111, 633.4201 through
20 23 633.4214, 633.4301 through 633.4309, 633.4401 and 633.4402,
20 24 633.4501 through 633.4507, 633.4601 through 633.4605, 633.4701
20 25 and 633.4702, 633.5101 through 633.5104, 633.6101 through
20 26 633.6105, 633.6201 and 633.6202, and 633.6301 through
20 27 633.6308, as amended in this Act, to new chapter 633A and to
20 28 retain the same section number designations.

20 29 Sec. 55. CODE EDITOR DIRECTIVE. The Code editor is
20 30 directed to correct internal references in the Code as
20 31 necessary due to the enactment of this Act.
20 32
20 33
20 34

20 35 _____
JOHN P. KIBBIE
President of the Senate

21 5 _____
CHRISTOPHER C. RANTS
Speaker of the House

21 8 I hereby certify that this bill originated in the Senate and
21 9 is known as Senate File 379, Eighty-first General Assembly.

21 13 _____
MICHAEL E. MARSHALL
Secretary of the Senate

21 15 Approved _____, 2005

21 18 _____
21 19 THOMAS J. VILSACK
21 20 Governor